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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Note verbale dated 7 September 2017 from the Permanent Mission of Egypt to the United Nations addressed to the Secretary-General

The Permanent Mission of the Arab Republic of Egypt to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to transmit herewith a note verbale addressed by 32 Member States to the Secretary-General (see annex) placing on record their persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention of existing stipulations under international law and outlining the reasons therefor, following the adoption of General Assembly resolution 71/187, entitled "Moratorium on the use of the death penalty", on 19 December 2016 by a recorded vote.

The 32 Member States listed in the attached note verbale wish to draw the Secretary-General's attention to paragraph 1 of General Assembly resolution 71/187, which reaffirms the sovereign right of all countries to develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations, and kindly request the Secretary-General to reflect the points made in the attached note verbale, in particular the reaffirmation of the sovereign right of all countries to develop their own legal systems set out in resolution 71/187, in the report of the Secretary-General to the Assembly at its seventy-third session on the implementation of resolution 71/187, and to have the present note verbale circulated as a document of the Assembly, under agenda item 68 (b).

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Annex to the note verbale dated 7 September 2017 from the Permanent Mission of Egypt to the United Nations addressed to the Secretary-General

New York, 7 September 2017

The Permanent Missions to the United Nations in New York listed below have the honour to refer to General Assembly resolution 71/187, entitled "Moratorium on the use of the death penalty", which was adopted by the Third Committee on 17 November 2016 and subsequently by the Assembly on 19 December 2016 by a recorded vote. The Permanent Missions wish to place on record that they are in persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention of existing stipulations under international law, for the following reasons:

(a) There is no international consensus that the death penalty should be abolished. The votes on this resolution in previous sessions of the General Assembly have confirmed this fact, and the issue continues to be a divisive one. Article 6 of the International Covenant on Civil and Political Rights states, inter alia, that "in countries which have not abolished the death penalty, sentences of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime";

(b) This view was reflected previously in:

(i) The note verbale contained in document A/69/993, in which the co-signing delegations expressed their persistent objection to any attempt to impose a moratorium on the application of the death penalty or its abolition in contravention of existing stipulations under international law, following the adoption of General Assembly resolution 69/186;

(ii) The note verbale contained in document A/67/841, in which the co-signing delegations expressed their persistent objection to any attempt to impose a moratorium on the application of the death penalty or its abolition in contravention of existing stipulations under international law, following the adoption of General Assembly resolution 67/176;

(iii) The note verbale contained in document A/65/779, in which the co-signing delegations expressed their persistent objection to any attempt to impose a moratorium on the application of the death penalty or its abolition in contravention of existing stipulations under international law, following the adoption of General Assembly resolution 65/206;

(iv) The note verbale contained in document A/63/716, in which the co-signing delegations expressed their persistent objection to any attempt to impose a moratorium on the application of the death penalty or its abolition in contravention of existing stipulations under international law, following the adoption of General Assembly resolution 63/168;

(v) The note verbale contained in document A/62/658, in which the co-signing delegations expressed their persistent objection to any attempt to impose a moratorium on the application of the death penalty or its abolition in contravention of existing stipulations under international law, following the adoption of General Assembly resolution 62/149;

(vi) The joint statement contained in document E/CN.4/2005/G/40, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2005/59;

(vii) The joint statement contained in document E/CN.4/2004/G/54, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2004/67;

(viii) The joint statement contained in document E/CN.4/2003/G/84, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2003/67;

(ix) The joint statement contained in document E/CN.4/2002/198, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2002/77;

(x) The joint statement contained in documents E/CN.4/2001/161 and Corr.1, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2001/68;

(xi) The joint statement contained in document E/CN.4/2000/162, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2000/65;

(xii) The joint statement contained in document E/1999/113, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 1999/61;

(xiii) The joint statement contained in documents E/1998/95 and Add.1, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 1998/8;

(xiv) The joint statement contained in documents E/CN.4/1998/156 and Add.1, in which the co-signing delegations expressed their reservations prior to the adoption of Commission on Human Rights resolution 1998/8;

(xv) The joint statement contained in document E/1997/106, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 1997/12;

(c) In his statement to the plenary of the Rome Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court, on 17 July 1998, the President of the Conference declared that the debate at the Conference on the issue of which penalties should be applied by the Court showed that there is no international consensus on the inclusion or non-inclusion of the death penalty, and further that not including the death penalty in the Rome Statute would not in any way have a legal bearing on national legislations and practices with regard to the death penalty, nor should it be considered as influencing, in the development of customary international law or in any other way, the legality of penalties imposed by national systems for serious crimes. Accordingly, the Rome Statute of the International Criminal Court, which is applicable only to States parties, maintains that nothing in part 7 of the Statute affects the application by States of penalties prescribed by their national law, or the law of States which do not provide for penalties prescribed in that part;

(d) Capital punishment has often been characterized by some as a human rights issue in the context of the right to life of the convicted prisoner. However, it is first and foremost an issue of the criminal justice system and an important deterring element vis-a-vis the most serious crimes. It must therefore be viewed from a much broader perspective and weighed against the rights of the victims and the right of the community to live in peace and security;

(e) Every State has an inalienable right to choose its political, economic, social, cultural, legal and criminal justice systems, without interference in any form

by another State. Furthermore, the purposes and principles of the Charter of the United Nations, in particular Article 2, paragraph 7, clearly stipulate that nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. Accordingly, the question of whether to retain or abolish the death penalty, and the types of crimes for which the death penalty is applied, should be determined by each State, taking fully into account the sentiments of its own people, the state of crime and criminal policy. On this question, it is improper to attempt to create a universal decision or to prescribe to Member States actions that fall within their domestic jurisdiction, or attempt to change, by way of a General Assembly resolution, the stipulations under international law that were reached through a comprehensive negotiation process;

(f) Some Member States have voluntarily decided to abolish the death penalty, whereas others have chosen to apply a moratorium on executions. Meanwhile, many Member States also retain the death penalty in their legislations. All Member States are acting in compliance with their international obligations. Each Member State has decided freely, in accordance with its own sovereign right established by the Charter of the United Nations, to determine the path that corresponds to its own social, cultural and legal needs in order to maintain social security, order and peace. No Member State has the right to impose its standpoint on others.

The Permanent Missions to the United Nations listed below kindly request the Secretary-General to have the present note verbale circulated as a document of the General Assembly, under agenda item 68 (b).

1. Antigua and Barbuda
2. Bangladesh
3. Barbados
4. Botswana
5. Brunei Darussalam
6. Chad
7. China
8. Democratic People's Republic of Korea
9. Egypt
10. Ethiopia
11. Grenada
12. Iran
13. Iraq
14. Jamaica
15. Kuwait
16. Libya
17. Malaysia
18. Maldives
19. Nigeria
20. Oman

21. Pakistan
22. Papua New Guinea
23. Saint Kitts and Nevis
24. Saint Lucia
25. Saint Vincent and the Grenadines
26. Saudi Arabia
27. Singapore
28. Sudan
29. Syrian Arab Republic
30. United Arab Emirates
31. Yemen
32. Zimbabwe